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No. 83-1593

In the Supreme Court of the United States

OCTOBER TERM, 1984

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., PETITIONERS

v.

FRANK KUEHNER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPPLEMENTAL BRIEF FOR THE PETITIONERS

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Pursuant to Rule 22.6 of the Rules of this Court, the Solicitor General, on behalf of the Secretary of Health and Human Services and the other petitioners, files this supplemental brief to discuss the effect on this case of the Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98-460, 98 Stat. 1794 *et seq.*, which was signed by the President on October 9, 1984. We have lodged a copy of that Act with the Clerk of the Court and reproduced Section 2 of the Act as an appendix to this brief. As we shall explain below, the 1984 Act requires that the claims of all of the class members be remanded to the Secretary for new administrative proceedings and that the complaint in this action be dismissed.

A

Respondents allege that certain practices of the Secretary and the Pennsylvania Disability Determination Bureau in reviewing the continuing eligibility of persons receiving disability benefits under Title II and Title XVI of the Social Security Act violate that Act and the Due Process Clause. Specifically, they allege that petitioners:

(1) fail to show, as a condition to terminating benefits, that the claimant's medical condition has improved; (2) fail to give presumptive effect to the prior determination of disability; (3) terminate benefits in the absence of fully developed evidence from all treating personnel and without giving appropriate weight to such evidence; and (4) terminate benefits without sufficiently considering such factors as medical equivalence, combination of impairments, pain, and residual functional capacity (C.A. App. 25-27; Pet. App. 39a-40a). The district court certified a class of plaintiffs consisting of all disability beneficiaries under Title II and Title XVI of the Act in Pennsylvania "whose benefits have been terminated or are threatened with termination and who have presented claims for continued disability" (C.A. App. 40).

The district court dismissed the complaint for lack of subject matter jurisdiction under 42 U.S.C. (Supp. V) 405(g) (Pet. App. 39a-45a), but the court of appeals reversed and remanded for further proceedings (Pet. App. 1a-34a). The court of appeals held that respondents were not required to exhaust their administrative remedies before bringing an action under 42 U.S.C. (Supp. V) 405(g) with regard to issues on which the Secretary had allegedly taken a "fixed" position (Pet. App. 7a-11a), and that jurisdiction also was available over the federal defendants under 28 U.S.C. 1361 and over the state defendants under 28 U.S.C. 1331, notwithstanding the preclusion of review in 42 U.S.C. 405(h) (Pet. App. 12a-13a, 5a-7a).

As we explained in our reply brief (at 3-7), the court of appeals' decision is flatly inconsistent with this Court's decision in *Heckler* v. *Ringer*, No. 82-1772 (May 14, 1984), and with the Court's prior precedents that were reaffirmed in that decision. We therefore submitted in the reply brief (at 7) that the case should be remanded to the court of appeals for further consideration in light of *Ringer*. Congress's recent action, however, now requires a different disposition.

B

The Social Security Disability Benefits Reform Act of 1984 specifically addresses most of the substantive issues respondents raised in district court, and it also directs a particular disposition of this case as a procedural matter.

1. a. One of the principal purposes of the new legislation is to resolve the controversy over the so-called "medical improvement" issue. That issue has generated widespread litigation, often in the form of massive class actions, that has substantially disrupted the orderly administration of the Social Security disability program.

The "medical improvement" issue concerns the evidentiary standards that the Secretary must utilize in determining whether a person receiving disability benefits continues to be disabled. Prior to the passage of the 1984 amendments, the Social Security Act itself did not address that question,[1] although it was settled that the claimant bore the burden of proving by medical evidence that he met the statutory standard of eligibility when his status was reviewed. See *Mathews* v. *Eldridge*, 424 U.S. 319, 336 (1976). Pursuant to her authority under 42 U.S.C. 405(a) to promulgate evidentiary and other rules and procedures (see *Heckler* v. *Campbell*, No. 81-1983 (May 16, 1983), slip op. 7-8), the Secretary determined that the inquiry when reviewing a recipient's continuing eligibility should focus on whether his current condition satisfied applicable standards, rather than on whether his condition had changed. It was not the Secretary's position, however, that the prior finding of disability was

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[1] The legislative history of the 1984 Act shows that Congress recognized that the Social Security Act previously did not impose special standards for continuing disability reviews. See, *e.g.*, H.R. Rep. 98-618, 98th Cong., 2d Sess. 11 (1984) ("the criteria for termination of benefits as a result of review were left unstated in the law" and "SSA has therefore had wide discretion to apply whatever standards it deemed appropriate"); S. Rep. 98-466, 98th Cong., 2d Sess. 7-8 (1984); 130 Cong. Rec. H9827 (daily ed. Sept. 19, 1984) (Joint Explanatory Statement of the Committee of Conference); *id.* at S11453 (remarks of Sen. Dole).

irrelevant, because it might well shed light on the claimant's current condition.

Many claimants challenged the Secretary's approach. Like respondents in this case, they typically argued that under the Social Security Act even as it existed prior to the 1984 amendments, if an individual was once found to be disabled he was entitled to a presumption that he continued to be disabled when his eligibility was subject to review, thereby effectively shifting the burden to the Secretary in all disability review cases to produce evidence that the individual was no longer disabled. The courts of appeals had taken varying approaches to the issue,[2] and the Solicitor General was considering a request that this Court resolve the matter.

b. In Section 2 of the 1984 Act, Pub. L. No. 98-460, 98 Stat. 1794, Congress amended Sections 223(f) and 1614(a) of the Social Security Act (42 U.S.C. (Supp. V) 423(f); 42 U.S.C. (& Supp. V) 1382c) to prescribe detailed standards for the termination of disability benefits. Under the amendments, a recipient of disability benefits whose case is reviewed may be determined not to be entitled to benefits on the basis of a finding that his impairment is not disabling only if that finding is supported by: (1) substantial evidence that there has been medical improvement in the individual's impairment and that he is now able to engage in substantial gainful activity; (2) new medical evidence and a new assessment of the individual's residual functional capacity demon-

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[2] Some courts had held that the claimant should be afforded a presumption of continuing disability. See, *e.g.*, *Patti* v. *Schweiker*, 669 F.2d 582, 586-587 (9th Cir. 1982); *Dotson* v. *Schweiker*, 719 F.2d 80, 82 (4th Cir. 1983); *Haynes* v. *Secretary of HHS*, 734 F.2d 284, 288 (6th Cir. 1984); *DeLeon* v. *Secretary of HHS*, 734 F.2d 930, 936-937 (2d Cir. 1984); *Rush* v. *Secretary of HHS*, 738 F.2d 909, 914-916 (8th Cir. 1984). But see *Gist* v. *Secretary of HHS*, 736 F.2d 352, 355-357 (6th Cir. 1984). The Third Circuit had rejected such a presumption and held that the claimant bore the initial burden of establishing that there had not been improvement in his medical condition. See *Kuzmin* v. *Schweiker*, 714 F.2d 1233, 1237 (3d Cir. 1983).

strating that, although his condition has not improved medically, he has undergone vocational therapy or is the beneficiary of advances in medical or vocational therapy or technology and is now able to engage in substantial gainful activity; (3) substantial evidence based on new or improved diagnostic techniques demonstrating that the individual's impairment is not as disabling as it previously was considered to be and that he is now able to engage in substantial gainful activity; or (4) substantial evidence that the prior determination of disability was in error.[3] The amendments to Sections 223(f) and 1614(a) expressly provide, however, that there is no presumption of continuing disability and that the determination whether the person is currently disabled is to be made on a neutral basis after considering all evidence available in the file.

2. Congress also concluded when it passed the 1984 Act that it was essential to the effective, uniform, and fair administration of the disability program that the widespread and disruptive litigation over the appropriate standards for terminating benefits should cease immediately and that all pending cases should instead be considered under the new statutory standards. To implement this determination, Congress specified in detail the manner in which the new statutory standards would be applied to pending cases. There are essentially three categories of cases affected:

Cases Pending on Administrative Review. The new medical improvement standards apply to (i) all cessation determinations made by the Secretary on or after the date of enactment of the 1984 amendments, and (ii) all cessation determinations with respect to which a final de-

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[3] The amendments to Sections 223(f) and 1614(a) also provide that benefits may be terminated if the prior determination that the individual was disabled was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, fails to cooperate in the review of his entitlement, or fails to follow a prescribed treatment that could be expected to restore his ability to engage in substantial gainful activity.

cision of the Secretary had not been made on the date of enactment but with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of 42 U.S.C. (& Supp. V) 405 and regulations of the Secretary. § 2(d)(2)(A) and (B), 98 Stat. 1797.

Individual Cases Pending on Judicial Review. The new standards apply to all cessation determinations with respect to which a request for judicial review was pending on September 19, 1984 (the date of the Conference Committee's action) and which involve individual litigants or *named* plaintiffs in a class action pending on that date. § 2(d)(2)(C) 98 Stat. 1797.[4] Any cases in this category that are ones "relating to medical improvement"[5] must be remanded by the court to the Secretary for review under the new standards. § 2(d)(2), 98 Stat. 1798 (final paragraph). The individual may request payment of interim benefits until the initial redetermination by the Secretary. § 2(e), 98 Stat. 1798.

Class Actions. The new standards apply to any unnamed member of a pending class action "relating to medical improvement" (see note 5, *supra*) if the class was certified on or before September 19, 1984, and if the individual class member was found not to be entitled to disability benefits on the ground that his impairment had ceased, did not exist, or was not disabling. § 2(d)(3),

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[4] The new standards also apply in cases in which the Secretary had rendered a final decision within the 60-day period prior to the date of enactment but the claimant had not yet sought judicial review under 42 U.S.C. (Supp. V) 405(g), but only if the claimant seeks judicial review in a timely fashion (*i.e.*, within 60 days of the final decision) after the date of enactment. § 2(d)(2)(D), 98 Stat. 1797.

[5] The term "action relating to medical improvement" is defined to mean a suit raising the issue whether an individual should not have had his entitlement to disability benefits terminated "without consideration of whether there has been medical improvement in the condition of such individual * * * since the time of a prior determination that the individual was under a disability." § 2(d)(6), 98 Stat. 1798.

98 Stat. 1798.[6] In the case of any such individual, "the court shall remand such case to the Secretary." *Ibid.* The Secretary is then required to notify each individual by certified mail that, within 120 days of receipt of the notice, he may request that his case be reviewed under the new standards. The individual also may request payment of interim benefits pending the initial redetermination. § 2(e), 98 Stat. 1798.

Section 2(d)(3), 98 Stat. 1798, permits unnamed class members in pending certified class actions relating to medical improvement an opportunity to have their cases reviewed under the new statutory standards whether or not they had exhausted their administrative remedies or satisfied the 60-day filing requirement in 42 U.S.C. (Supp. V) 405(g). Congress chose to grant this special relief to members of certified classes "even where they may not have pursued their appeal rights in accordance with section 205 and the Secretary's regulations" because of the need to "resolve the controversy over the medical improvement issue in the courts" and because many class members "may have formed reasonable expectations from the fact of certification that they would receive further review of the case." 130 Cong. Rec. S11454 (daily ed. Sept. 19, 1984) (remarks of Sen. Dole).[7] See also *id.* at H9828 (Joint Explanatory Statement of the Committee of Conference). But Congress did not thereby sanction a

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[6] Section 2(d)(5) of the 1984 Act, 98 Stat. 1798, provides that no class in a class action relating to medical improvement may be certified after September 19, 1984 if the class action seeks judicial review of a decision terminating entitlement made by the Secretary prior to September 19, 1984. This prevents any future class action litigation on the medical improvement issue under prior law. See 130 Cong. Rec. S11454 (daily ed. Sept. 19, 1984) (remarks of Sen. Dole); S. Rep. 98-466, 98th Cong., 2d Sess. 16-17 (1984).

[7] Under the Senate bill, the only unnamed class members whose claims would have been preserved and remanded to the Secretary were those who had fully exhausted their administrative remedies and for whom judicial review was sought (in the form of the class

general exception to the exhaustion and time-limit requirements in 42 U.S.C. (Supp. V) 405(g).[8]

C

The named and unnamed members of the class in this case are entitled to relief under the 1984 Act. This case is one "relating to medical improvement" within the

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action) within 60 days of the Secretary's final decision, as required by 42 U.S.C. 405(g). See 130 Cong. Rec. S6202-S6203 (daily ed. May 22, 1984). The Senate Report explained that insofar as the bill would have barred reopening of claims where the claimant had not sought further administrative review or judicial review within 60 days, it merely restated existing law that "precludes judicial review of administrative denials of claims that the claimants themselves allowed to become final." S. Rep. 98-466, *supra*, at 14, citing *Califano* v. *Sanders*, 430 U.S. 99 (1977); see also S. Rep. 98-466, *supra*, at 15. Similarly, relying upon 42 U.S.C. 405(g), the Secretary's regulations, and this Court's decisions in *Weinberger* v. *Salfi*, 422 U.S. 749 (1975), and *Heckler* v. *Ringer*, No. 82-1772 (May 14, 1984), the report explained that under existing law, a claimant could obtain judicial review on a claim for benefits that involved the medical improvement issue only if he first exhausted his administrative remedies through the Appeals Council stage. S. Rep. 98-466, *supra*, at 15.

The effective date provision of the House bill did not address the effect of the bill on members of certified classes in pending class actions. See 130 Cong. Rec. H1992 (daily ed. Mar. 27, 1984). The Conference Committee revised the bill to grant relief to all members of certified classes.

[8] The Joint Explanatory Statement cautioned that the granting of remand relief to all members of certified classes does not reflect a view "as to whether those classes would otherwise have been found to be properly certified in accordance with the exhaustion and finality requirements of section 205 of the Social Security Act." 130 Cong. Rec. H9828 (daily ed. Sept. 19, 1984). Chairman Dole, the floor manager in the Senate, stressed that the time limits, exhaustion requirements, and other provisions of Section 205 of the Social Security Act and regulations of the Secretary "are critical to the orderly administration of the program" and that the omission of those requirements in the medical improvement section of this special legislation "should not be interpreted as detracting from their broad applicability." *Id.* at S11454. See also S. Rep. 98-466, *supra*, at 15.

meaning of Section 2(d) of the 1984 Act, since the first two of the four issues respondents raise in the complaint pertain directly to the medical improvement question (C.A. App. 25-26). See page 2, *supra*.[9] The cases of the individual named respondents therefore should be remanded to the Secretary to be reviewed pursuant to Section 2(d)(2)(C) of the 1984 Act. In addition, the class in this case was certified on May 4, 1982 (C.A. App. 40), well before the September 19, 1984 cut-off date for members of certified classes to be covered by the standards in the 1984 Act. The cases of the unnamed class members therefore should be remanded to the Secretary

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[9] The class in this case was not defined to include only those individuals whose claims for benefits actually involved the medical improvement issue. It was defined to include all Pennsylvania residents whose disability benefits have been terminated or are threatened with termination (C.A. App. 40). This class definition presumably is attributable to the fact that, as we have noted (see page 2, *supra*), respondents raise issues other than medical improvement. The claims of the individual class members in this case that raise these other issues are covered by the special statutory remand procedure even if they do not raise the medical improvement issue, because the class action is one "relating to medical improvement." All that is necessary in order for an individual member of a class in such a case to be included in a remand is that he was found not entitled to receive benefits because his "impairment * * * has ceased, does not exist, or is not disabling" (§ 2(d)(3)(A), 98 Stat. 1798) — *i.e.*, that his benefits were terminated because of a determination relating to his impairment, and not, for example, because of fraud or because he had returned to work. The additional issues raised in the complaint in this case (see page 2, *supra*) fall within the covered category. Moreover, many of the additional issues respondents raise are themselves addressed by 1984 Act. See § 3, 98 Stat. 1799 (evaluation of pain), § 4, 98 Stat. 1800 (multiple impairments), § 9, 98 Stat. 1804 (evidence from the treating physician). If an individual class member elects after remand to have his case reviewed, the standards in the 1984 Act with regard to these issues also would apply in that review.

In other class actions, however, where the class or a subclass is confined to persons whose individual claims actually raise the medical improvement issue, only such persons would be entitled to the remand relief.

for further proceedings pursuant to Section 2(d)(3) of the 1984 Act.[10]

The 1984 Act contemplates no further role for any court after an individual case or the case of an unnamed member of a certified class has been remanded to the Secretary. This conclusion is evident from a number of features of the special procedures Congress has prescribed in Section 2(d) of the 1984 Act.

The individual cases of named class members must be remanded by the appropriate court to the Secretary, who then will proceed after remand to review them pursuant to the new statutory standards. The court has no discretion in the matter. The same is true with regard to cases of the unnamed class members. It is also significant that it is the individual cases that are to be remanded, not the class as such, and it is only after remand that the Secretary is to notify each individual of his right to request a new administrative review. This notification and review in turn will be undertaken pursuant to uniform procedures that the Secretary will apply to all such individual claims. Moreover, Section 2(d)(4) of the 1984 Act expressly provides that the decision of the Secretary following review "shall be regarded as a new decision * * * of the Secretary." That new decision "supersedes" the prior determination that was pending on judicial review and is "subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary in conformity with such section." § 2(d)(4), 98 Stat. 1798.

Because the 1984 Act plainly contemplates that new proceedings will be commenced in each individual case after remand, the individual cases cannot at the same

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[10] Of course, in the case of any named or unnamed class members who already have been found to be entitled to continue to receive benefits even under the Secretary's interpretation of prior law, there will be no occasion for the Secretary actually to reopen and redetermine their claims after remand.

time be subject to the continuing jurisdiction of the court in the class action. Any such continuing exercise of authority by the courts would be inconsistent with the clear intent of Congress to end the disruption and lack of uniformity in the administration of the Social Security disability program that had resulted from class actions in various jurisdictions on the medical improvement issue. Compare *Heckler* v. *Day*, No. 82-1371 (May 22, 1984), slip op. 12. Accordingly, the complaint in the instant case should be dismissed when the claims of the individual class members are remanded to the Secretary.

CONCLUSION

For the foregoing reasons, we suggest that the Court enter the following order in this case:

> The petition for a writ of certiorari is granted, the judgment of the court of appeals is vacated, and the case is remanded to the court of appeals to be remanded to the district court with instructions to: (i) remand the cases of the named respondents to the Secretary for review pursuant to Section 2(d)(2)(C) of the Social Security Disability Benefits Reform Act of 1984; (ii) remand the cases of the unnamed class members to the Secretary for proceedings pursuant to Section 2(d)(3) of that Act; and (iii) dismiss the complaint.

Respectfully submitted.

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Solicitor General

OCTOBER 1984

APPENDIX

Section 2 of the Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98-460, 98 Stat. 1794, provides:

STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS AND PERIODS OF DISABILITY

SEC. 2. (a) Section 223(f) of the Social Security Act is amended to read as follows:

Standard of Review for Termination of Disability Benefits

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that—

"(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(B)(i) the individual is now able to engage in substantial gainful activity, or

"(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or

"(2) substantial evidence which—

"(A) consists of new medical evidence and (in a case to which clause (ii) (II) does not apply) a new assessment of the individual's residual functional capacity, and demonstrates that—

"(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(ii) (I) the individual is now able to engage in substantial gainful activity, or

"(II) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or

"(B) demonstrates that—

"(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

"(ii) the requirements of subclause (I) or (II) of subparagraph (A) (ii) are met; or

"(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the

individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

"(A) the individual is able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband), cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced

wife, widower, or surviving divorced husband). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.".

(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: "The provisions set forth in section 223(f) with respect to determinations of whether entitlement to benefits under this title or title XVIII based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling)."

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A recipient of benefits based on disability under this title may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(A) substantial evidence which demonstrates that—

"(i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(ii) the individual is now able to engage in substantial gainful activity; or

"(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

"(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

"(I) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(II) the individual is now able to engage in substantial gainful activity, or

"(ii) demonstrates that—

"(I) although the individual has not improved medically, he or she has

undergone vocational therapy (related to the individual's ability to work), and

"(II) the individual is now able to engage in substantial gainful activity; or

"(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

"(D) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to the determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this title is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by

the Secretary. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.".

(d)(1) The amendments made by this section shall apply only as provided in this subsection.

(2) The amendments made by this section shall apply to—

(A) determinations made by the Secretary on or after the date of enactment of this Act;

(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary;

(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act.

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act—

(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject

to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary in conformity with such section.

(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

(6) For purposes of this subsection, the term "action relating to medical improvement" means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

(e) Any individual whose case is remanded to the Secretary pursuant to subsection (d) or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act, to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

(1) shall be made at least until an initial redetermination is made by the Secretary; and

(2) shall begin with the payment for the month in which such individual makes such election.

(f) In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.

(g) The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this section not later than 180 days after the date of the enactment of this Act.

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